

MEMORANDUM OF LAW

DATE: February 11, 1992

TO: Tom Huffman, Deputy Park and Recreation Director,
Golf Course Operations Division

FROM: City Attorney

SUBJECT: Volunteers on Golf Courses

You recently sent a memorandum asking us to research the issue of using volunteers on golf courses, with possible tasks to include marshalling, picking up trash, maintaining courses, etc. You asked three specific questions which we will answer in order.

1. Would there be a significant liability problem?

Answer: Assuming you mean liability of the City for on-the-job injuries of volunteers, the issue of workers' compensation is rather complex and depends on the nature of the relationship between the public agency and the volunteer. A review of relevant case law is appropriate here. The California Supreme Court has held that "an employer-employee relationship must exist in order to bring the Workers' Compensation Act into effect." *County of Los Angeles v. Workers' Compensation Appeals Board*, 30 Cal.3d 391, 396 (1981). As clarification, an appellate court has held that

although a person who renders service to another is presumed to be an "employee" . . . that presumption will be overcome if the essential contract of hire, express or implied, is not present. Citations omitted. "The traditional features of an employment contract are (1) consent of the parties, (2) consideration for the services rendered, and (3) control by the employer over the employee. Citation."

Spradlin v. Cox, 201 Cal.App.3d 799, 807 (1988), quoting *Parsons v. Workers' Compensation Appeals Board*, 126 Cal.App.3d 629, 638 (1981).

In addition, case law has addressed the issue of compensation in employee status determination. "There must be a contract of hire or employment, although a pecuniary consideration is not required, and services voluntarily and gratuitously performed are not included."

Emphasis in original. *Edwards v. Hollywood Canteen*, 27 Cal.2d 802, 806 (1946).

It has long been a requirement of an employment contract that it be supported by

consideration. ¶Citation omitted.σ The counterpart to this principle is the rule of law that a person providing purely gratuitous voluntary service is not an employee and has not entered into an employment relationship with the person receiving the services for purposes of the Workers' Compensation Act.

¶Citations omitted.σ It has also long been a rule that for purposes of workers' compensation, the consideration or compensation for an employment contract need not be in the strict form of wages or money. ¶Citations omitted.σ

Barragan v. Workers' Compensation Appeals Board, 195 Cal.App. 3d 637, 646 (1987).

Finally, "where there is some form of economic compensation, the most important element in deciding whether one is an employee is that of the right of control." Jones v. Workmen's Compensation Appeals Board, 20 Cal.App.3d 124, 129 (1971).

In addition to the case law cited above, California Labor Code section 3363.5 holds in relevant part that

a person who performs voluntary service without pay for a public agency, as designated and authorized by the governing body of the agency or its designee, shall, upon adoption of a resolution by the governing body of the agency so declaring, be deemed to be an employee of the agency for purposes of this division ¶workers' compensationσ while performing such service.

In 1981, the City Council passed such a resolution, a copy of which is attached for your information. According to that resolution and the accompanying documents, specific approval of a volunteer program is required. If you want these volunteers to be covered by workers' compensation, it would be necessary that they be part of an approved volunteer program. We suggest you discuss this issue with the volunteer coordinator of your department.

Therefore, in answer to your question as to whether the golf course volunteers would be covered by workers' compensation, you must first ascertain if there is or will be an employment contract, express or implied, between the City and the volunteers. Next, it must be decided whether there is some form of compensation or consideration to the volunteers, and, finally, whether the requisite element of control is present where the volunteers are concerned. The volunteers will not be covered under Workers' Compensation Insurance unless all three of these conditions are met. Of course, if the volunteers were to be included under an approved volunteer program, the City Council resolution

authorizing Workers' Compensation benefits for volunteers in approved programs would be applicable.

2. Can we provide free or reduced greens fees to volunteers?

Answer: The above discussion would necessarily affect the answer to your second question. Free or reduced greens fees may be provided to the volunteers, and would, arguably, be seen as compensation, thereby creating an employer/employee relationship, with the resulting eligibility for workers' compensation.

3. Any problem with them driving city vehicles or lessee's golf carts?

Answer: The City's potential for liability would be increased considerably if the volunteers were to drive City vehicles, according to the theory of respondeat superior. If the City has the right of control over the action of the person involved, then the City may be liable for negligent acts of that person. As to volunteers driving lessee's golf carts, we would need to review the agreement between lessee and the City before determining the City's liability if volunteers were to drive lessee's vehicles.

CONCLUSION

The nature of the relationship between the City and any volunteers, or, in the alternative, the inclusion of these volunteers in a City Council approved program, would determine whether they would be eligible for workers' compensation. Reduced or free greens fees may be given to volunteers, but would, in our opinion, create an employer/employee relationship, thereby entitling them to coverage. It would not be recommended that volunteers drive City vehicles, and operation of lessee's vehicles would depend on the lease between City and lessee.

We trust we have answered your questions. Please let us know if we can be of further service to you on this matter.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

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Attachment:1

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